

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA

Plaintiff,

vs.

JUAN SALAZAR-ESPINOZA

Defendant.

8:10CR231

ORDER

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), Filing No. [37](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.* The rules also provide that if "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must dismiss the motion. *Id.*

The defendant entered a plea of guilty on February 2, 2011, Filing No. 28, and was sentenced on June 15, 2012, to 120 months. Judgment, Filing No. [34](#). He did not file a direct appeal. The defendant filed his motion to vacate on June 18, 2012. Filing No. [37](#). In his § 2255 motion, the defendant alleges that he did not knowingly and voluntarily enter his guilty plea due to ineffective assistance of counsel and claims that his attorney failed to file his notice of appeal.

On initial review, the court finds that "it does not plainly appear that the defendant is entitled to no relief," and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required.

See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.

Dated this 16th day of July, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge

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